

February 5, 2020

**Via ECF**

Honorable Paul G. Gardephe  
United States District Judge  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

**Re: United States v. Avenatti, No. S1 19 Cr. 373 (PGG)**  
**Letter Regarding Fed.R.Evid. 803(3)**

Dear Judge Gardephe:

Pursuant to the Court's request, attached to this letter is the email sent to Chambers yesterday attaching the following cases: *United States v. Schultz*, No. 14-cr-467-3, 2017 WL 2080348 (N.D. Ill. May 15, 2017); *United States v. DeMaria*, 727 F.2d 265 (2d Cir. 1984); *United States v. Harwood*, 998 F.2d 91 (2d Cir. 1993).

Respectfully,

/s/ Scott A. Srebnick  
Scott A. Srebnick  
Jose M. Quinon  
E. Danya Perry

**From:** [Howard Srebnick](#)  
**To:** [Alexandra Widas](#); [Sobelman, Robert \(USANYS\)](#)  
**Cc:** [Podolsky, Matthew \(USANYS\)](#); [Richenthal, Daniel \(USANYS\)](#); [Scott Srebnick](#); [Jose M. Quiñon](#); [Danya Perry](#); [Michael Ruocco](#)  
**Subject:** AVENATTI- FRE 803(3)  
**Date:** Tuesday, February 4, 2020 1:30:56 PM  
**Attachments:** [United States v Schultz.pdf](#)  
[US v DiMaria.pdf](#)  
[US v Harwood.pdf](#)

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Alexandra

Enclosed are three cases (Schultz, DiMaria and Harwood) that bear on the argument my brother Scott made in support of the admissibility of the text messages under FRE 803(3):

**(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

Fed. R. Evid. 803

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**From:** Alexandra Widas <[REDACTED]>  
**Sent:** Tuesday, February 4, 2020 8:19 AM  
**To:** Sobelman, Robert (USANYS) [REDACTED]  
**Cc:** Podolsky, Matthew (USANYS) [REDACTED]; Richenthal, Daniel (USANYS) <[REDACTED]>; Scott Srebnick <[REDACTED]>; Howard Srebnick <[REDACTED]>; Jose M. Quiñon [REDACTED]>; Danya Perry <[REDACTED]>; Michael Ruocco <[REDACTED]>  
**Subject:** Re: This Morning

The Court confirms that we will begin this morning at 9:15.

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**From:** Alexandra Widas [REDACTED]  
**Sent:** Tuesday, February 4, 2020 7:39 AM  
**To:** Sobelman, Robert (USANYS)  
**Cc:** Podolsky, Matthew (USANYS); Richenthal, Daniel (USANYS); Scott Srebnick; Howard Srebnick; Jose M. Quiñon ; Danya Perry  
**Subject:** Re: This Morning

Thank you. I will let you know when that time is confirmed.

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**From:** Sobelman, Robert (USANYS) [REDACTED] >

**Sent:** Tuesday, February 4, 2020 6:15 AM

**To:** Alexandra Widas

**Cc:** Podolsky, Matthew (USANYS); Richenthal, Daniel (USANYS); Scott Srebnick; Howard Srebnick;  
Jose M. Quiñon ; Danya Perry

**Subject:** This Morning

Ms. Widas,

The parties have an issue to raise with the Court and therefore respectfully request that we convene at 9:15 a.m. today.

Rob Sobelman